mathematically on the basis of the number of lost years. He expressly rejects a calculation based on loss of earning capacity or upon the social position of the person whose life is shortened and he recalls Lord Atkin's substantial distinction between damages awarded to the living because life is shortened and damages to a third person because of some other person's death. He reviews the circumstances of the deceased's life so far as they were known to him with the evident object of estimating the kind of life she might have expected to live in the future.

I think therefore that although the learned Judge did not in terms refer to the "prospect of a predominantly happy life" as the thing to be valued, he was in fact making as best he could an estimate in money of that prospect and that the amount he thought proper to award in the circumstances of that case provides a useful standard of comparison.

In the circumstances of the present case I should say that the deceased had a considerably better prospect of a predominantly happy life than the unfortunate Chinese woman labourer. So taking all these matters into consideration and using the best judgment I can in this difficult matter, I think that $1,500 would be a proper sum to award.

There remains the question of funeral expenses. The plaintiff's evidence is rather vague and is not supported by vouchers but it has not been seriously challenged except as to an item of $60.00 given to feeding the poor. The plaintiff says that this is a pious custom among Mohammedans. That may be so, but payments of this kind are generally made with the intention of getting a benefit for the soul of the departed and are not payments requisite to secure a decent burial. I do not think that the defendant should be expected to pay this item and I allow funeral expenses at $90 only.

I therefore give judgment for the plaintiff for $1,590 and costs.

Order Accordingly.

TAN CHENG LAI v. REX.

[App. Crim. Juris. (McElwaine, C.J.) October 3, 1941]

Traffic Regulations 1939 Regulations 73 and 81 —Penalty for second or subsequent offence—Previous conviction under Section 10 (1) Traction Engines and Motor Cars Ordinance (Cap. 214) cannot be regarded as a first conviction under the Traffic Regulations— Traction Engines and Motor Cars Ordinance, Section 6.

This was an appeal against sentence. The appellant was convicted under Regulation 73 of the Traffic Regulations, 1939 for driving a vehicle otherwise than in a careful manner and with due regard for the safety of others. It appeared that the appellant had previously been convicted under Section 10(1) of the Traction Engines and Motor Cars Ordinance. The learned Magistrate considered that the latter conviction might be reasonably held to be a first conviction under the Traffic Regulations, 1939 and he imposed a fine of $50/- which was half the maximum fine for a second or subsequent offence against the Regulations. The maximum fine for a first offence is $25/-.

Held, that in order to make a person liable for the increased penalty for a second or subsequent offence under Regulation 81 of the Traffic Regulations 1939, he must have been previously convicted under the Regulations and that the Magistrate was wrong in regarding a previous conviction under Section 10(1) of the Traction Engines and Motor Cars Ordinance as a first conviction under the Traffic Regulations, 1939.

MAGISTRATE'S APPEAL.

P. C. Nathan for the appellant.

C. H. Butterfield for the respondent.

McElwaine, C.J. :—This is an appeal against sentence. I reserved my decision to consider whether the fine imposed was one authorised by law.

The conviction was under Regulation 73 of the Traffic Regulations, 1939, "No vehicle shall be driven upon a public road otherwise than in a careful manner and with due regard for the safety of others."

Regulation 81 provides that any person who contravenes any of these regulations shall be guilty of an offence and shall be liable in respect of a first offence to a fine not exceeding $25.

On 28th July 1939 the appellant was convicted under section 10 (1) of the Traction Engines and Motor Cars Ordinance. The learned Magistrate considered that this latter conviction might be reasonably held to be a first conviction under the Traffic Regulations, 1939, and he imposed a fine of $50 which was half the maximum fine for a second offence against the Regulations.

The word 'offence' in the phrase 'first offence' has the same meaning as it has when used a few words earlier in the same Regulation and it refers to a contravention of the Regulations.

The learned Magistrate took the view that a person who drives "negligently or at a speed or in

a manner which is dangerous to the public", to use the words of section 10 (1) of Cap. 214, is not driving "in a careful manner and with due regard for the safety of others" to use the words of the Regulation, and that therefore the first conviction may be regarded as a conviction under the Regulations, though in fact it was under the Ordinance.

However attractive this view is, it is not a safe one to adopt. Under section 10 it is not essential that any person should actually be put in peril, while under the Regulation it is at least arguable that the safety of some other person must actually be imperilled. The offences may be different in more than degree.

These are penal provisions and they must be construed strictly, and I think that a second or subsequent offence in Regulation 81 implies that the person has already been convicted under the Regulations and that it does not cover a previous conviction for an analogous offence committed against an Ordinance different to the Ordinance under which the Regulations were made.

The suspension of the licence is authorised by section 6 of the Traction Engines and Motor Cars Ordinance which refers to offences in respect of motor cars, whether the offences are under the Ordinance or not.

The fine of $50 is more than can be imposed for a first offence under the Regulations. It must consequently be reduced, and I reduce it to $10 or seven days simple imprisonment. The licence I presume has not been suspended during the pendency of this appeal. If this is so, the Magistrate's order suspending the licence for three months will take effect as from 3rd October 1941.

Save as to the variations above-mentioned the appeal is dismissed.

As the fine has been paid $40 must be refunded to the appellant.

Fine Reduced.

YONG YONG PENG v. REX.

[App. Crim. Juris. (McElwaine, C.J.) September 22, 1941]

Penal Code, Section 420—Cheating—Giving of a cheque which was later dishonoured in circumstances showing that there was an implied representation that the cheques would be met—Circumstances showing that accused had no intention to pay for goods—Fraudulent Debtors Ordinance, Section 3 (a).

In this case the appellant had been convicted of two charges of cheating (1) that he did on or about the 10th March 1941 cheat Yap Chan Guan by deceiving him into believing that a cheque for $150.00 would be met and so induced the said Yap Chan Guan to deliver 10 bags of flour and (2) that he on or about the 11th of March 1941 cheated Chua Tian Seng by deceiving him into believing that a cheque for $209.19 would be met on presentation and so induced the said Chua Tian Seng to deliver him 13 dozen tins of "Barlova". It appeared that the appellant was the partner, if not the sole proprietor, of a shop Chop Ban Seng Chiang which had a bank account. In 1941 the business declined and on the 11th of March 1941 there was a balance of $3.12 in the Chop's banking account. The appellant kept the books of the Chop. On the afternoon of the 12th March the Chop vacated its premises at 12 Merchant Lane, taking with them some cases and sacks but leaving behind the Chop signboard and the seals.

Held, (1) that an essential ingredient in the offence of cheating is a dishonest intention at the time of obtaining the money or the goods;

(2) that there was evidence in this case of a false representation of an existing fact and also evidence of a fraudulent intent and that therefore the appellant was rightly found guilty of the offence of cheating;

(3) that in any case the evidence showed that the appellant had no intention to pay at the time he got the goods, and that he was therefore guilty under Section 3 (a) of the Fraudulent Debtors Ordinance.

Cases referred to :—

(1) *Lee Kang Wye v. Ng Ah Min,* 4 Kyshc 335.

(2) *R. v. Hazelton,* 44 L.J.M.C. 11.

(3) *Edgington v. Fitzmaurice,* 29 Ch. D. 483.

(4) *R. v. Thompson,* 5 Cr. App. R. 9.

MAGISTRATE'S APPEAL.

Appellant in person.

E. N. Griffith-Jones for the respondent.

McElwaine, C.J. :—The appellant and one Tan Chok Keun were associated in a Chop known as Ban Seng Chiang which I shall refer to as the Chop. Both were charged with cheating and at their trial each swore that the other was the proprietor of the Chop and himself only a servant.

The learned District Judge found as a fact that the appellant was a partner, if he was not the sole proprietor, and there was evidence to support this finding.

The Chop was in business from 1st July 1940 and possibly from an earlier date. It had a Bank